## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 10/079,865

Filed: February 21, 2002

Inventor: Uma Arunkumar

SPEEDY DELIVERY OF
COMMUNICATIONS TO A VEHICLE

Group Art Unit: 2144

Examiner: Peling Andy Shaw

Attorney Docket No. GP-302051-OST-ALS

## APPEAL BRIEF

Board of Patent Appeals and Interference
US Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

On May 15, 2008, Appellant filed a second Notice of Appeal of a Final Rejection in the Final Office Action of February 15, 2008. The appeal covers claims 23-44 which were rejected on prior art grounds.

The requisite fee for filing this Appeal Brief has been paid. Please charge any other required fees or credit any excess to Deposit Account No. 07-0960.

**(i)  Real Party in Interest**

The real party in interest is the assignee of the applicant inventor who assigned all of his right, title and interest to General Motors Corporation, a Michigan corporation, having its principal place of business at 300 Renaissance Center, Detroit, Michigan 48265-3000.

**(ii)  Related Appeals and Interferences**

There are no other appeals and/or interferences known to Appellant, his assignee, and/or legal representatives that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

**(iii)  Status of Claims**

Claims 1-22 have previously been cancelled.  Claims 23-44 remain in the application and all currently stand rejected on the basis of prior art.  The rejection of each of these claims 23-44 is being appealed.

The application does not contain any other claims.

**(iv)  Status of Amendments**

No amendments have been filed and subsequent to the last Office Action; however, copies of the attached assignment recordations were filed subsequent to the Notice of Appeal.

### (v)  Summary of Claimed Subject Matter

In accordance with 37 CFR 41.37(c)(1)(v), a concise explanation is provided below of subject matter defined in each of the independent claims involved in this appeal, with reference to the specification by page and line numbers and to the drawings by reference characters. Also in accordance with 37 CFR 41.37(c)(1)(v), for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function as permitted by 35 U.S.C. 112, sixth paragraph, is identified and the structure, material, or acts described in the specification as corresponding to each claimed function is set forth with reference to the specification by page and line numbers, and to the drawings by reference characters.

The disclosed embodiment of the invention variously recited in the claims involves a method for delivering a communication 12 for a customer 16 from a third party sender 14. The method may be implemented via a system 10 including a server 18 and a client vehicle communication unit (VCU) 20 installed in a vehicle 22. (Fig. 4; Page 3, lines 14-17.) In general, the system 10 includes hardware and/or software for establishing a connection between the server 18 and the VCU 20 and for acquiring an ignition status of the vehicle 22. (Fig. 4; Page 3, line 17-22.) The system 10 also includes hardware and/or software for storing the communication 12 and delivering communication to the customer 16 once the customer is available. (Fig. 1; Page 3, lines 23-29.)

System 10 can be used to carry out the claim 23 method for notifying a customer of a message for delivery via the client VCU 20 installed in the customer's vehicle 22. The method includes the steps of establishing a connection between server 18 and client VCU 20 (Figs. 1, 1A; Page 5, lines 1-7), sending a query to the client VCU 20 from the server 18 for an indication of whether the customer 16 is available in the vehicle 22 for receiving the message (Figs. 1, 1B; Page 6, lines 1-8), and sending a message to the client VCU 20 for delivery to the customer 16 if the server 18 receives the indication that the customer is available. (Figs. 1, 1C; Page 7, lines 14-17.) If the server 18 does not receive the indication that the customer 16 is available for receiving the message, then any one or more of the following are performed:  i) sending a failed delivery message to the client VCU 20;  (Fig. 1D; Page 10, lines 9-15.)  ii) sending the message to the client for storage on the client VCU 20;  (Fig. 3; Page 12, lines 6-11.)  or iii) retrying

delivery of the message to the client VCU 20 at a later time after a time interval. (Fig. 2; Page 11, lines 12-18.)

If the server 18 fails to receive the indication that the customer 16 is available in response to previous queries, a query may be periodically sent to the client VCU 20. (Fig. 2; Page 11, lines 12-15.) The method may also include annunciating to the customer 16 the type of message available for delivery if the server 18 receives the indication that the customer 16 is available. (Fig. 1C; Page 7, lines 13-23.) A message may be stored for later annunciation to the customer 16 on the client VCU 20 upon the server acquiring an IGNITION OFF status. (Fig. 1D, Page 10, lines 16-22.) A code may be sent to the client VCU 20 from the server 18 representative of the message for later annunciation. (Fig. 1C, Page 7, lines 13-17.)

The system 10 can also be used to carry out the claim 32 method for delivering a message for customer 16 from server 18 to client VCU 20 installed in the customer's vehicle 22. The method includes the steps of establishing a connection between a server 18 and the client VCU 20 (Figs. 1, 1A; Page 5, lines 1-7) and sending a query to the client VCU 20 from the server 18 for an ignition status as an indication of whether the customer 16 is available in the vehicle 22 for receiving the message. (Figs. 1, 1B; Page 6, lines 1-8.) The query is re-sent to the client VCU 20 from the server 18 for an ignition status if no ignition status is returned from the client VCU 20 to the server 18. (Fig. 1D; Page 10, lines 1-6.) If the server 18 receives an ignition status indicating that the customer 16 is available, then the method annunciates to the customer 16 that a message is available for delivery. (Fig. 1C; Page 7, lines 13-21.)

The method may also include the step of storing a message for later annunciation to the customer 16 on the client VCU 20 upon the server 18 acquiring an IGNITION OFF. (Fig. 1D, Page 10, lines 16-22.) A code may be sent to the client VCU 20 from the server 18 representative of the message for later annunciation. (Fig. 1C, Page 7, lines 13-17.)

The system 10 can additionally be used to carry out the claim 42 method for notifying customer 16 of a message available for delivery via client VCU 20 installed in the customer's vehicle 22. The method includes the steps of attempting to establish a connection between server 18 and the client VCU 20. (Figs. 1, 1A; Page 5, lines 1-7.) If the connection was not

established, then performing any one or more of retrying to establish a connection between the server 18 and the client VCU 20 (Fig. 1A; Page 5, lines 19-23), or storing a failed delivery message. (Fig. 1D; Page 10, lines 9-15.)

If the connection between the server 18 and the client VCU 20 is established, then a query is sent to the client VCU 20 from the server 18 for an ignition status as an indication of whether the customer is available in the vehicle for receiving the message. (Figs. 1, 1B; Page 6, lines 1-8.) If the server receives an ignition status indicating that the customer is available, then a message is sent to the client VCU for delivery to the customer. (Fig. 3; Page 12, lines 8-14.)

Although the Appellants have provided the summary of claimed subject matter with references to specific embodiments of the invention to comply with the requirements set forth in the relevant provisions of 37 C.F.R. 41.37(c)(1), this summary has been provided to aid the Board in evaluating the appeal and is not intended to limit the meaning or definition of any terms in the claims.

**(vi)  Grounds of Rejection to be Reviewed on Appeal**

The first issue is whether the subject matter of claims 23-27, 29-35, 37-38, and 40-44 is unpatentable under 35 U.S.C. § 103(a) as being obvious over U.S. Publication No. 2003/0103599 to Jijina et al. (Jijina) in view of U.S. Patent No. 5,559,860 to Mizikovsky.

The second issue is whether the subject matter of claims 28, 36, and 39 is unpatentable under 35 U.S.C. § 103(a) as being obvious over Jijina, in view of Mizikovsky and further in view of U.S. Publication No. 2002/0128000 to do Nascimento, JR. (Nascimento).

**(vii)  Argument**

*Rejection Under 35 U. S. C. § 103(a)*

Claims 23-27, 29-35, 37-38, and 40-44 stand rejected under 35 U.S.C. § 103(a) as being obvious over Jijina in view of Mizikovsky.  Claims 28, 36, and 39 stand rejected under 35 U.S.C. § 103(a) as being obvious over Jijina, in view of Mizikovsky and further in view of Nascimento. The rejections are respectfully traversed for the reasons discussed below.

Claims 23-44

Applicant respectfully submits that the Jijina reference cited in each §103(a) obviousness rejection is not prior art that can be properly used in support of these rejections.

35 U.S.C. §103(c)(1) states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The subject matter of Applicant's claims and the Jijina reference were subject to an obligation of assignment to a common entity at the time the claimed invention was made.  These obligations of assignment were evidenced by written assignments executed by the inventors listed in Jijina as well as for the present application, and those assignments were recorded at or around the time of filing of the applications.  The present application was filed on February 21$^{st}$, 2002.  Jijina is only prior art under 102(e) because the application in question was filed prior to the both the issuance of Jijina as a patent and the publication of its application.[1]  Therefore, it is not proper to combine the teachings of Jijina with the teachings of other prior art.

Attached to this brief is a copy of the Patent Assignment Abstract of Title from the USPTO website indicating an assignment of each of Jijina's assignor's interest to the same assignee on January 30$^{th}$, 2002.  Also attached is a copy of the Patent Assignment Abstract of

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[1]     The Jijina reference, published on June 5, 2003 ultimately matured into U.S. Patent No. 6,904,141 on June 7, 2005.

Title indicating assignment of the inventor's interest in the present application to that same entity. These assignment abstracts have been submitted in compliance with 37 C.F.R. §41.33(d)(1) governing, *inter alia*, evidence after appeal. Section (d)(1) states:

> An affidavit or other evidence filed after the date of filing an appeal pursuant to §41.31(a)(1) through (a)(3) and prior to the date of filing a brief pursuant to §41.37 may be admitted if the examiner determines that the affidavit or other evidence overcomes all rejections under appeal and that a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented has been made.

Furthermore, regardless of whether or not these assignment abstracts are accepted into evidence, Appellant submits that the statements and arguments presented herein are sufficient <u>alone</u> to establish common ownership and invoke 35 U.S.C. § 103(c) to remove Jijina as a § 103 reference. MPEP § 706(02)(I)(2)(II) states:

> Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

As stated earlier, the present application and the Jijina reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. Thus, Jijina cannot properly be used as part of a § 103 rejection. And, given that all of the rejections rely on Jijina as a primary reference under 35 U.S.C. § 103, Appellant respectfully submits that the removal of this reference is sufficient to overcome the rejections of all claims. Accordingly, Appellant respectfully requests that the rejections be withdrawn or reversed and that all claims be held allowable.

## Conclusion

In view of the foregoing, Appellant respectfully submits that the rejections of Claims 23-27, 29-35, 37-38, and 40-44 as being obvious over Jijina in view of Mizikovsky, claims 28, 36,

and 39 as being obvious over Jijina, in view of Mizikovsky and further in view of Nascimento are improper and should be overturned.

The Commissioner is hereby authorized to charge any deficiencies, or credit any overpayment associated with this appeal brief to Deposit Account No. 07-0960.

Respectfully submitted,

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**(viii)  Claims Appendix**

1-22. (Cancelled)

23.  A method for notifying a customer of a message available for delivery via a client vehicle communication unit (VCU) installed in a vehicle of the customer, the method comprising the steps of:

      establishing a connection between a server and the client VCU;

      sending a query to the client VCU from the server for an indication of whether the customer is available in the vehicle for receiving the message;

      sending a message to the client VCU for delivery to the customer if the server receives the indication that the customer is available; and

      if the server does not receive the indication that the customer is available for receiving the message, then performing any one or more of the following:

            i) sending a failed delivery message to the client VCU,

            ii) sending the message to the client for storage on the client VCU, or

            iii) retrying delivery of the message to the client VCU at a later time after a time interval.

24.  The method of claim 23, wherein the indication of whether the customer is available in the vehicle for receiving the message is an ignition status.

25.  The method of claim 23, wherein the message is one of the group consisting of a voice message, a facsimile (FAX), an E-mail message, and a transfer of data.

26.  The method of claim 23, wherein the step of sending a message to the client VCU for delivery to the customer further comprises annunciating to the customer the type of message available for delivery.

27. The method of claim 23, wherein the step of sending a message to the client VCU for delivery to the customer occurs after the vehicle ignition is turned on if the indication that the customer is available is not received by the server.

28. The method of claim 23, further comprising the steps of periodically sending a query to the client VCU from the server if the server fails to receive the indication that the customer is available in response to previous queries.

29. The method of claim 23, wherein sending a message to the client VCU for delivery to the customer includes broadcasting an audible message to the customer inside the vehicle.

30. The method of claim 23, further comprising the step of storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status.

31. The method of claim 30, further comprising the step of sending a code to the client VCU from the server representative of the message for later annunciation.

32. A method for delivering a message for a customer from a server to a client vehicle communication unit (VCU) installed in a vehicle of the customer, the method comprising the steps of:

　　establishing a connection between a server and the client VCU;

　　sending a query to the client VCU from the server for an ignition status as an indication of whether the customer is available in the vehicle for receiving the message;

　　re-sending the query to the client VCU from the server for an ignition status if no ignition status is returned from the client VCU to the server; and

　　annunciating to the customer that a message is available for delivery if the server receives an ignition status indicating that the customer is available.

33. The method of claim 32, wherein the step of annunciating to the customer that a message is available for delivery further comprises annunciating the type of communication available for delivery.

34. The method of claim 32, wherein the step of annunciating to the customer that a message is available for delivery occurs after the vehicle ignition is turned on if no ignition status indicating that the customer is available is received by the server.

35. The method of claim 32, wherein annunciating the communication includes broadcasting an audible message to the customer inside the vehicle.

36. The method of claim 32, further comprising the step of sending an IGNITION ON message to the server from the client VCU when the ignition mode changes from an off mode another mode.

37. The method of claim 32, further comprising the step of storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status.

38. The method of claim 37, further comprising the step of sending a code to the client from the server representative of the message for later annunciation.

39. The method of claim 32, wherein the customer initiates delivery of the message with a verbal command.

40. The method of claim 32, further comprising the step of delaying delivery of the message to client VCU upon acquiring an IGNITION OFF status.

41. The method of claim 32, further comprising the step of storing the message at the server upon acquiring an IGNITION OFF status.

42. A method for notifying a customer of a message available for delivery via a client vehicle communication unit (VCU) installed in a vehicle of the customer, the method comprising the steps of:

      attempting to establish a connection between a server and the client VCU;

      if the connection was not established, then performing any one or more of the following:

            i) retrying to establish a connection between the server and the client VCU, or

            ii) storing a failed delivery message;

      if the connection between the server and the client VCU is established, then sending a query to the client VCU from the server for an ignition status as an indication of whether the customer is available in the vehicle for receiving the message; and

      if the server receives an ignition status indicating that the customer is available, then sending a message to the client VCU for delivery to the customer.

43. The method of claim 42, wherein the step of sending a message to the client VCU for delivery to the customer further comprises sending ring tones to the client VCU.

44. The method of claim 42, wherein the step of sending a message to the client VCU for delivery to the customer further comprises the customer initiating delivery of the message to the customer.

**(ix)  Evidence Appendix**

   Attached at the end of this Appeal Brief are the following:

   1. Patent Assignment Abstract of Title for Jijina; and

   2. Patent Assignment Abstract of Title for the present application.

**(x)  Related Proceedings Appendix**

None.

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**Total Assignments: 1**

**Patent #:** 6904141    **Issue Dt:** 06/07/2005    **Application #:** 10001941    **Filing Dt:** 11/30/2001

**Publication #:** 20030103599    **Pub Dt:** 06/05/2003

**Inventors:** Jasmin Jijina, John J. Correia, Ronald W. Fraser, William E. Mazzara JR. et al

**Title:** METHOD AND DEVICE FOR REMOTELY ROUTING A VOICE CALL

**Assignment: 1**

**Reel/Frame:** 013550/0873    **Recorded:** 11/21/2002    **Pages:** 4

**Conveyance:** ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

| **Assignors:** | | **Exec Dt:** |
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| CORREIA, JOHN J. | | 01/30/2002 |
| FRASER, RONALD W. | | 01/30/2002 |
| MAZZARA, WILLIAM E. JR. | | 01/30/2002 |
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**Total Assignments: 1**

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|---|---|---|---|
| **Patent #:** NONE | **Issue Dt:** | **Application #:** 10079865 | **Filing Dt:** 02/21/2002 |
| **Publication #:** 20030158946 | **Pub Dt:** 08/21/2003 | | |

**Inventor:** Uma Arunkumar

**Title:** Speedy delivery of communication to a vehicle

**Assignment: 1**

| | | |
|---|---|---|
| **Reel/Frame:** 012623/0772 | **Recorded:** 02/21/2002 | **Pages:** 2 |

**Conveyance:** ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

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